

OPEN MEETING ITEM

8/13/09

COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



0000101112

SECURITIES DIVISION
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Phoenix, AZ 85007
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ARIZONA CORPORATION COMMISSION

MEMORANDUM

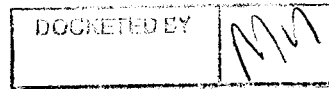
TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

Arizona Corporation Commission

DOCKETED

JUL 29 2009

FROM: Matthew J. Neubert *mjn*
Director of Securities



DATE: July 28, 2009

RE: Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same by Dona Kuryanowicz (S-20659A-09-0100)

CC: Ernest G. Johnson, Executive Director

RECEIVED
2009 JUL 29 P 2:25
AZ CORP COMMISSION
DOCKET CONTROL

Attached is a proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same by Dona Kuryanowicz ("Kuryanowicz"). The Order requires Kuryanowicz to cease and desist her activity, repay the amount of profit she received on her own investment in the amount of \$102,978 and pay an administrative penalty in the amount of \$20,000.

Beginning in January 2007, Kuryanowicz began receiving funds from investors. Kuryanowicz explained to prospective investors that their funds would be transferred to Deborah Bennett ("D. Bennett"), whom Kuryanowicz had known for forty years, and that D. Bennett would then be responsible for using the funds to conduct stock trading. From investment returns received from D. Bennett, Kuryanowicz paid herself \$204,000 resulting in a profit on her own \$101,022 investment of \$102,978.

The Order finds that Kuryanowicz violated A.R.S. §§44-1841, 44-1842 and 44-1991 by selling unregistered securities while being unlicensed and making untrue statements or misleading omissions of material facts. The Division believes that this Consent Order is appropriate to protect the public welfare.

Originator: William W. Black

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 In the matter of)
9 DONA KURYANOWICZ, a single woman,) DOCKET NO. S-20659A-09-0100
10 Respondent.) DECISION NO. _____
11) **ORDER TO CEASE AND DESIST, ORDER**
12) **FOR RESTITUTION, ORDER FOR**
13) **ADMINISTRATIVE PENALTIES AND**
14) **CONSENT TO SAME**
15) **BY: RESPONDENT DONA KURYANOWICZ**

16 Respondent DONA KURYANOWICZ ("Respondent") elects to permanently waive any
17 right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. §
18 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for
19 Restitution, Order for Administrative Penalties and Consent to Same ("Order"). Respondent
20 admits the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admits
21 nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to
22 the entry of this Order by the Commission.

23 **I. FINDINGS OF FACT**

24 1. Beginning January 2007 and continuing into August 2007, Respondent solicited
25 approximately \$1,885,978 from nineteen investors through the offering of an unregistered
26 investment contract.

 2. Respondent communicated to prospective investors that the investment opportunity
involved stock trading to be conducted by an individual known as Deborah Cheryl Bennett ("D.
Bennett").

1 3. The type of stock trading that was to be conducted by D. Bennett is known as
2 "Channel trading" or "trading channel," both relate to the trading of stock based on the charting of
3 a stock's price. More specifically, when charting the price of a stock, the term "trading channel"
4 refers to the space on the price chart between a stock's support and resistance levels. The price of
5 the stock is expected to stay within the support and resistance levels until a breakout occurs.
6 "Channel trading" refers to the method of trading stocks whereby traders will purchase a stock
7 when its price is near the bottom of the trading channel and sell it when the price gets close to the
8 top of the trading channel, making a profit on the price spread.

9 4. Respondent explained to prospective investors that she would be responsible for
10 gathering investor funds and forwarding them to D. Bennett. Respondent told prospective
11 investors that D. Bennett would then deposit investor funds into a Charles Schwab trading account
12 from which D. Bennett would conduct channel trading of stocks.

13 5. Respondent and D. Bennett agreed that all investment returns would be paid by D.
14 Bennett to Respondent who would then be responsible for distributing the returns to the various
15 investors who had deposited funds with Respondent.

16 6. The returns promised to investors by Respondent varied over time, but included
17 promises in some instances of 20-30% monthly, plus periodic bonuses.

18 7. Respondent conveyed to prospective investors that she had known D. Bennett for
19 forty years and that D. Bennett had been very successful trading stocks, was personally
20 guaranteeing the funds invested and assuring Respondent that investors could not lose their
21 principal.

22 8. Many of the investors who deposited funds with Respondent for investment with D.
23 Bennett relied solely on Respondent for information related to the details of the investment and D.
24 Bennett's qualifications as a stock trader.

25 9. Respondent did not request nor did she receive sufficient information to confirm
26 whether D. Bennett possessed any qualifications to trade stocks or whether she had, in fact, been

1 successful trading stocks. Respondent did rely on D. Bennett's representation that she had earned
2 \$800,000 in one day by trading stocks.

3 10. Respondent did not take sufficient action to confirm whether D. Bennett possessed
4 the financial capacity to guarantee the funds being invested by Respondent on behalf of others.

5 11. Respondent did not take sufficient action to confirm whether D. Bennett was
6 depositing the funds she received from Respondent into the Charles Schwab trading account.

7 12. Beginning January 2007, Respondent began receiving funds from investors. The
8 funds received from investors were deposited into Respondent's personal checking account.
9 Respondent then transferred investors' funds to D. Bennett. Respondent received investment
10 returns from D. Bennett in the amount of \$995,000. Of this amount, Respondent paid herself
11 \$204,000 resulting in a return on her own \$101,022 investment of \$102,978.

12 13. There was no formula employed by Respondent to allocate to investors the portion
13 they were to receive, if any, of the investment returns paid by D. Bennett. Several investors
14 received no return on their investment and all but two investors who invested through Respondent
15 received back less than the principal amount they invested.

16 14. Beginning in 2006, D. Bennett received \$10,637,500 from investors, inclusive of the
17 approximately \$1,885,978 forwarded by Respondent to D. Bennett.

18 15. D. Bennett failed to deposit into the Charles Schwab trading account approximately
19 \$4,000,000 of the total funds she received and utilized amounts she received for her personal use or
20 benefit.

21 16. D. Bennett sustained approximately \$1,000,000 of losses in her attempts made at
22 trading stocks.

23 17. D. Bennett and Respondent have never been registered as securities salespersons in
24 Arizona.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondent offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. Respondent violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. Respondent violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

5. Respondent violated A.R.S. § 44-1991 by making untrue statements or misleading omissions of material facts including:

a) Failing to disclose to prospective investors that she did not have sufficient information to confirm whether D. Bennett possessed the qualifications to trade stocks or whether she had, in fact, been successful trading stocks; and

b) Failing to disclose to prospective investors that she had not taken sufficient action to confirm whether D. Bennett possessed the financial capacity to guarantee the funds being deposited by Respondent with D. Bennett on behalf of others.

6. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

8. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

III. ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's consent to the entry of this Order, attached and incorporated by reference, the Commission finds

1 that the following relief is appropriate, in the public interest, and necessary for the protection of
2 investors:

3 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's
4 agents, employees, successors and assigns, permanently cease and desist from violating the
5 Securities Act.

6 IT IS FURTHER ORDERED that Respondent comply with the attached Consent to Entry
7 of Order.

8 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent pay
9 restitution to the Commission in the amount of \$102,978. Payment shall be made in full on the
10 date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum
11 from the date of this Order until paid in full. Payment shall be made to the "State of Arizona" to
12 be placed in an interest-bearing account controlled by the Commission.

13 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
14 records of the Commission. Any restitution funds that the Commission cannot disburse because an
15 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
16 investor because the investor is deceased and the Commission cannot reasonably identify and
17 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
18 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
19 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
20 disburse shall be transferred to the general fund of the state of Arizona.

21 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent pay an
22 administrative penalty in the amount of \$20,000. Payment shall be made to the "State of Arizona."
23 Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this
24 Order until paid in full. Payment shall be made in full on the date of this Order. The payment
25 obligations for these administrative penalties shall be subordinate to any restitution obligations
26

1 ordered herein and shall become immediately due and payable only after restitution payments have
2 been paid in full or upon Respondent's default with respect to Respondent's restitution obligations.

3 For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default. If
4 Respondent does not comply with this Order, any outstanding balance may be deemed in default
5 and shall be immediately due and payable.

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IT IS FURTHER ORDERED, that if Respondent fails to comply with this Order, the Commission may bring further legal proceedings against Respondent, including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2009.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(wwb)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondent DONA KURYANOWICZ ("Respondent"), an individual, admits the
3 jurisdiction of the Commission over the subject matter of this proceeding. Respondent
4 acknowledges that she has been fully advised of her right to a hearing to present evidence and call
5 witnesses and she knowingly and voluntarily waives any and all rights to a hearing before the
6 Commission and all other rights otherwise available under Article 11 of the Securities Act and
7 Title 14 of the Arizona Administrative Code. Respondent acknowledges that this Order To Cease
8 And Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same
9 ("Order") constitutes a valid final order of the Commission.

10 2. Respondent knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. Respondent acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. Respondent understands that she is represented by an attorney in this matter and has
16 reviewed this Order with her attorney, Robert L. Baumann, and understands all terms it contains.

17 5. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law
18 contained in this Order.

19 6. Respondent agrees that she shall not contest the validity of the Findings of Fact and
20 Conclusions of Law contained in this Order in any present or future administrative proceeding
21 before the Commission or any other state agency concerning the denial or issuance of any license
22 or registration required by the state to engage in the practice of any business or profession.

23 7. By consenting to the entry of this Order, Respondent agrees not to take any action
24 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
25 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
26

1 factual basis. Respondent will undertake steps necessary to assure that all of Respondent's agents
2 and employees, if any, understand and comply with this agreement.

3 8. Notwithstanding the foregoing, this Order is not intended to collaterally estop,
4 factually bind or preclude Respondent from fully defending herself in any administrative, civil or
5 criminal proceedings to which the Commission is not a party, including, to the extent allowed by
6 law, being permitted to fully explain the facts and potential mitigating circumstances surrounding
7 Respondent's role in the stock trading investment opportunity involving Deborah Cheryl Bennett.

8 9. While this Order settles this administrative matter between Respondent and the
9 Commission, Respondent understands that this Order does not preclude the Commission from
10 instituting other administrative or civil proceedings based on violations that are not addressed by
11 this Order.

12 10. Respondent understands that this Order does not preclude the Commission from
13 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
14 that may be related to the matters addressed by this Order.

15 11. Respondent understands that this Order does not preclude any other agency or
16 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
17 proceedings that may be related to matters addressed by this Order.

18 12. Respondent agrees that Respondent will not apply to the state of Arizona for
19 registration as a securities dealer or salesman or for licensure as an investment adviser or
20 investment adviser representative until such time as all restitution and penalties under this Order
21 are paid in full.

22 13. Respondent agrees that Respondent will not exercise any control over any entity
23 that offers or sells securities or provides investment advisory services within or from Arizona until
24 such time as all restitution and penalties under this Order are paid in full.

25 14. Respondent agrees that Respondent will not sell any securities in or from Arizona
26 without being properly registered in Arizona as a dealer or salesman, or exempt from such

1 registration; Respondent will not sell any securities in or from Arizona unless the securities are
2 registered in Arizona or exempt from registration; and Respondent will not transact business in
3 Arizona as an investment adviser or an investment adviser representative unless properly licensed
4 in Arizona or exempt from licensure.

5 15. Respondent agrees that Respondent will continue to cooperate with the Securities
6 Division including, but not limited to, providing complete and accurate testimony at any hearing in
7 this matter and cooperating with the state of Arizona in any related investigation or any other
8 matters arising from the activities described in this Order.

9 16. Respondent consents to the entry of this Order and agrees to be fully bound by its
10 terms and conditions.

11 17. Respondent acknowledges and understands that if Respondent fails to comply with
12 the provisions of the Order and this consent, the Commission may bring further legal proceedings
13 against Respondent, including application to the superior court for an order of contempt.

14 18. Respondent understands that default shall render Respondent liable to the
15 Commission for its costs of collection and interest at the maximum legal rate.

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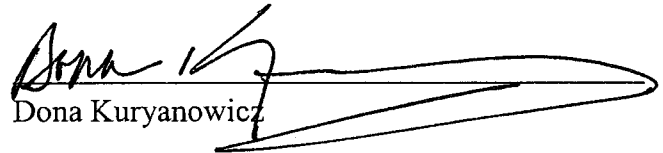
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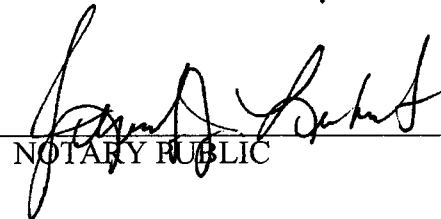
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19. Respondent agrees and understands that if Respondent fails to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. Respondent agrees and understands that acceptance of any partial or late payment by the Commission is not a waiver of default by Commission.


Dona Kuryanowicz

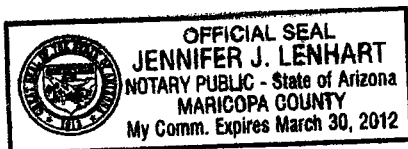
STATE OF ARIZONA)
) ss
County of)

SUBSCRIBED AND SWORN TO BEFORE me this 15 day of July, 2009.


NOTARY PUBLIC

My commission expires:

March 30, 2012



1 SERVICE LIST FOR: DONA KURYANOWICZ, a single woman

2 DOCKET NO.: S-20659A-09-0100

3 Robert L. Baumann, Esq.
4 2929 North 44th Street, Suite 120
5 Phoenix, Arizona 85018-0001
6 Counsel for Respondent Dona Kuryanowicz
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